

Earl L. Patrick v. U.S. General Accounting Office

Docket No. 25-100-17-83

Date of Decision: August 18, 1983

Cite as: Patrick v. GAO (8/18/83)

Before: Bussey, Presiding Member

Prohibited Personnel Practices

Equal Pay

ORDER

Earl L. Patrick filed a Petition for Review "of the decision denying his classification as an assistant work leader in the mail room made on April 5, 1983, by Milton J. Socolar, Special Assistant to the Comptroller General." (Petition, p.1.) Respondent has moved to dismiss the petition on the grounds that the Board lacks jurisdiction over the subject matter and that the petition fails to state a claim upon which relief may be granted.

Mr. Patrick contends that for a period from 1977 to 1981 he performed duties in the mailroom that materially exceeded those of a Motor Vehicle Operator, the position in which he was classified. GAO Order 2511.1, effective April 20, 1981, is entitled "Position Classification." Chapter 4 of that Order deals with classification appeals. Pursuant to the provisions of that Chapter, Mr. Patrick filed a classification appeal with the Director of Personnel. That appeal was denied on February 16, 1982. The Director of Personnel determined that Mr. Patrick was properly classified as a Motor Vehicle Operator. Paragraph 8 of Chapter 4 provides:

APPEAL TO THE COMPTROLLER GENERAL. When a decision has not been issued by the Director of Personnel within 60 days of the date the employee filed the application, or the employee is dissatisfied with the decision, the employee may appeal to the Comptroller General for consideration of the matter within 15 days (in the case of a written decision) of receipt of the written notice of the finding. The Comptroller General will then, as promptly as possible, decide the case. A review decision by the Comptroller General is final. There is no further right to review.

Pursuant to paragraph 8, Mr. Patrick appealed the decision of the Director of Personnel. On April 5, 1983, Mr. Socolar, on behalf of the Comptroller General, sustained the decision of the Director of Personnel and denied the classification appeal. Mr. Patrick has petitioned this Board for review of that decision.

The GAO argues that the petition involves only an appeal of a position classification, that 31 U.S.C. §753 defines the jurisdiction of the Personnel Appeals Board, that appeals of classification decisions are not enumerated in subsections (a)(1) through (7) of section 753, and that the Comptroller General has not exercised his authority under section 753(a)(8) to confer jurisdiction to the Board over classification appeals. Indeed, GAO points out, Order 2511.1, Chapter 4, paragraph 8 specifically provides: "A review decision by the Comptroller General is final. There is no further right to review."

In response to GAO's motion to dismiss, Mr. Patrick argues that the "gravamen of petitioner's complaint relates not to [a] question of classification, but to fundamental unfairness. . .", and that his "complaint relates to conduct on the part of management for personnel that is tantamount to a prohibited personnel practice" in violation of 5 U.S.C. §2302(b)(4), which provides:

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority --

(4) deceive or willfully obstruct any person with respect to such person's right to compete for employment.

"Competition, however passive, still exists for a job not yet classified ...", according to Mr. Patrick.

The Presiding Member disagrees with Petitioner's arguments. First, whether GAO's actions have been fair or unfair, the subject matter of this dispute concerns position classification. Second, 5 U.S.C. §2302(b)(4) does not apply to the factual circumstances alleged in this case. No vacancy for another job existed. Mr. Patrick's "right to compete for employment" has not been obstructed. If Mr. Patrick's factual allegations are true, the job he held may have been mis-classified. But no separate job, for which he was unable to compete, has been shown to exist.

The inquiry does not end there, however; 31 U.S.C. §753(a)(2) gives the Board jurisdiction over personnel practices prohibited by 5 U.S.C. §2302(b). It is a prohibited personnel practice under 5 U.S.C. §2302(b)(11) to "take or fail to take any . . . personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of [Title 5]." 5 U.S.C. §2301(b) provides:

Federal personnel management should be implemented consistent with the following merit system principles:

(3) Equal pay should be provided for work of equal value ...

A position classification system, and the proper classification of jobs within such a system, is a primary means of implementing the "equal pay" requirement. Indeed, in setting forth the purpose and scope of the GAO classification system, Order 2511.1 specifically provides: "Underlying this system are: *** (2) The principle of equal pay for work of substantially equal value; ..."

Therefore, failure to properly classify an employee's job so as to pay the employee less than the pay of substantially equal jobs is a prohibited personnel practice under 5 U.S.C. §2302(b)(11), over which the Board has jurisdiction. It is clear from Mr. Patrick's Petition for Review that he at all times has complained that his job classification was lower than warranted by his actual job duties. Mr. Patrick has alleged facts which, if true, may well violate 5 U.S.C. §2302(b)(11). His failure to articulate in his petition a proper legal theory of his claim does not deprive the Board of subject matter jurisdiction nor result in a failure to state a claim upon which relief may be granted.

Accordingly, GAO's motion to dismiss the Petition for Review is denied.¹

Notes

1. Because Mr. Patrick utilized the internal appeal procedures under GAO Order 2511.1 prior to petitioning the Board for review, there is no need to decide, at this time, whether exhaustion of such procedures is a necessary prerequisite to bringing a classification issue concerning "equal pay" before the Board. Likewise, it is not necessary at this stage of the proceeding to determine the degree of deference, if any, which the Board should give to classification decisions made by the GAO pursuant to the appeal procedures under Order 2511.1.